

# ITEL

October 11, 1988

## IteI Rail Corporation

55 Francisco Street  
San Francisco, California 94133  
(415) 984-4000

RECORDATION NO. 14165-MMM FILE 1286

OCT 17 1988 - 11 35 AM '88

INTERSTATE COMMERCE COMMISSION

Hon. Noretta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

Re: Amendment No. 5 to the Lease Agreement dated October 19, 1984, between IteI Rail Corporation and Sabine River and Northern Railroad Company

Dear Ms. McGee:

On behalf of IteI Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Amendment under the Lease Agreement dated October 19, 1984, between IteI Rail Corporation and Sabine River and Northern Railroad Company, which was filed with the ICC on December 3, 1984, under Recordation No. 14165-M.

The parties to the aforementioned instrument are listed below:

IteI Rail Corporation (Lessor)  
55 Francsico Street  
San Francisco, California 94133

Sabine River and Northern Railroad Company (Lessee)  
P. O. Box 5000  
Orange, Texas 77530

This Amendment adds to the Lease Agreement five hundred (500) 50', 70-ton, Plate C, XM boxcars to bear reporting marks SRN 5500-5999.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*Patricia Schumacker*

Patricia Schumacker  
Legal Department

**Interstate Commerce Commission**  
Washington, D.C. 20423

11/8/88

OFFICE OF THE SECRETARY

Patricia Schumacker  
Itel Rail Corporation  
55 Francisco Street  
San Francisco, California 94133

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/17/88 at 11:35am, and assigned recordation number(s). 14165-MMM

Sincerely yours,

*Narta L. McEue*  
Secretary

Enclosure(s)

THIS LEASE AGREEMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF THE CONNECTICUT BANK AND TRUST COMPANY, AS TRUSTEE (THE "TRUSTEE") UNDER A TRUST AGREEMENT DATED AS OF MAY 1, 1979, FOR THE BENEFIT OF GENERAL ELECTRIC CREDIT CORPORATION, AS AND TO THE EXTENT SAID LEASE AGREEMENT RELATES TO EQUIPMENT LEASED BY ITEL CORPORATION ("ITEL") FROM THE TRUSTEE PURSUANT TO THE LEASE OF RAILROAD EQUIPMENT DATED AS OF MAY 1, 1979 BETWEEN ITEL AND THE TRUSTEE.

REGISTRATION NO. 14165-MMM  
OCT 17 1988

AMENDMENT NO. 5

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 5 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of October 19, 1984, as amended, between ITEL RAIL CORPORATION ("Lessor") and SABINE RIVER AND NORTHERN RAILROAD COMPANY ("Lessee") is made this 4th day of October, 1988, between Lessor and Lessee.

RECITALS:

- A. Lessor and Lessee are parties to the Agreement pursuant to which two hundred fifty (250) boxcars bearing the reporting marks SRN 5400-5499 and SRN 3500-3649 have been leased by Lessor to Lessee. (Such items of equipment that are subject to the Agreement are known as the "Cars", and "Car" shall mean an individual item of equipment.)
- B. Lessor and Lessee desire to add to the Agreement five hundred (500) Cars bearing the reporting marks SRN 5500-5999.
- C. Lessor and Lessee desire to amend the terms of the Agreement with respect to all of the Cars.

NOW, THEREFORE, the parties hereto agree to amend the Agreement as follows:

- 1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Amendment No. 5.
- 2. This Amendment shall become effective upon its full execution by both parties.
- 3. Equipment Schedule No. 6 attached hereto, which describes five hundred (500) boxcars bearing the reporting marks SRN 5500-5999, shall be added to and made part of the Agreement.
- 4. With respect to all of the Cars, Subsection 2.A. of the Agreement as amended by Amendment No. 3 dated February 11, 1987 ("Amendment No. 3"),\* to the Agreement, shall be deleted in its entirety and replaced by the following:

"2. Term

- A. The term of the Agreement ('Term') with respect to each Car shall commence on the date of remark of such Car pursuant to Subsection 3.A. of the Agreement, and, with respect to all of the Cars, shall expire on December 31, 1993."
- 5. Subsection 5.B. of the Agreement shall be amended by adding the following four sentences after the second sentence of such Subsection 5.B.:

"Lessee shall not place any Car into a private contract repair facility or have any Car repaired by a private contractor on Lessee's property without prior approval from Lessor. All such repairs shall be performed

\* And by Section 2, of Amendment No. 4, dated June 25, 1987 ("Amendment No. 4") to the Agreement

under the direction and control of Lessor. Any repairs performed to the Cars by Lessee at Lessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties. Should the AAR Mechanical Department inspect or investigate Lessee's maintenance facilities and determine that restitution is due owners of equipment repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all equipment owned or managed by Lessor, including the Cars, that were repaired at Lessee's facilities."

6. The words "Lessor, Heller Financial, Inc. and any assignee of Lessor or of Heller Financial, Inc." shall be replaced by the words "Lessor, any financing party designated by Lessor by written notice to Lessee and any assignee of Lessor" each time they appear in the third and fourth sentences of Subsection 5.C. as amended by Section 8 of Amendment No. 3.
7. Subsection 7.C. of the Agreement, as modified by Section 10 of Amendment No. 3 and by Section 5 of Amendment No. 4 dated June 25, 1987 ("Amendment No. 4"), to the Agreement, shall be deleted in its entirety and replaced by the following:

"C. Lessee agrees to pay the following rent to Lessor for the use of the Cars:

(i)

(ii) ~~Lessee shall be entitled to the following: With respect to the Cars described on Equipment Schedules No. 1, No. 2.B.,~~

~~('Month') that such Car is subject to the Agreement, until such time that the two-hundred and fiftieth (250th) Car on Equipment Schedule No. 6 has been remarked to bear Lessee's reporting marks. At such time, with respect to all of the Cars that are subject to the Agreement, Lessee shall receive~~

~~Agreement. Commencing on the date that each Car on Equipment Schedule No. 6 is remarked to bear Lessee's reporting marks,~~

8. Subsection 7.E. of the Agreement as added by Section 11 of Amendment No. 3 and modified by Section 6 of Amendment No. 4 shall be deleted in its entirety and shall be replaced by the following:

3/ (ii) Lessee shall be entitled to the following:

With respect to the Cars described on Equipment Schedule No. 6, commencing on the date that each Car on that schedule is remarked to bear Lessee's reporting marks,

In addition to th  
described on Equipment Schedule No. 6, Lessee

on Equipment Schedule No.1, SDH  
No. 2.B, No. 3.A., No.4 and No. 5 for each full month that such Car is subject to the Agreement, until such time that the two hundred and fiftieth (250th) Car on Equipment Schedule No. 6 has been remarked to bear Lessee's reporting marks. At such time, with respect to all of the Cars that are subject to the Agreement,

each Car that is subject to the Agreement.

whichever is applicable, shall be prorated respectively

for an entire Month. Car that is not subject to the Agreement

- "E. If, with respect to any consecutive three (3) months during the Term, the Utilization Rate falls below eighty percent (80%) for all of the Cars, Lessor may, at any time, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine."
9. With respect to all of the Cars, Subsection 7.H. of the Agreement, as added by Section 11 of Amendment No. 3 and by Section 7 of Amendment No. 4, shall be deleted in its entirety and replaced by the following:
- "H. In the event that the ICC issues any order as a result of which the Cars in the aggregate in any calendar quarter ("Quarter") earn less than one thousand two hundred eight dollars and eighty-eight cents (\$1,208.88) per Car for such Quarter, then Lessor, at its option, may initiate negotiations for a new lease agreement involving the Cars. The Agreement shall continue in effect during any negotiation period. In the event a new lease agreement cannot be reached, Lessor may, at its option, terminate any or all of the Cars from the Agreement upon sixty (60) days' prior written notice to Lessee."
10. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.
11. This Amendment may be executed by the parties hereto in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

SABINE RIVER AND NORTHERN RAILROAD  
COMPANY

By: 

Title: President

Date: 10/4/88

By: 

Title: Executive Vice President

Date: 9/30/88


EQUIPMENT SCHEDULE NO. 6

Itel Rail Corporation hereby leases the following Cars to Sabine River and Northern Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of October 19, 1984, as amended.

AAR Mech Design.	Description	Numbers	Length	Dimensions		Height	Doors Width	No. of Cars
				Inside Width				
XM	50' 70-Ton, Plate C SRN 5500- Boxcar, Nailable Steel Floor, Cushion Underframe	5999	50'6" or 50'7"	9'6"		11' Min.	10' Slid- ing	500

ITEL RAIL CORPORATION

SABINE RIVER AND NORTHERN RAILROAD  
COMPANY

By: 

Title: President

Date: 10/4/88

By: 

Title:

Date:

STATE OF CALIFORNIA       )  
                                  ) ss:  
COUNTY OF SAN FRANCISCO )

On this 4<sup>th</sup> day of October, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL Rail Corporation, that the foregoing Amendment No. 5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said of corporation.



Sharon L. Van Foscam  
Notary Public

STATE OF Texas       )  
                                  ) ss:  
COUNTY OF Orange    )

On this 30<sup>th</sup> day of September, 1988, before me personally appeared Robert L. Williams, to me personally known, who being by me duly sworn says that such person is Vice President of Sabine River and Northern Railroad Company that the foregoing Amendment No. 5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said of corporation.

Deloris Hall  
Notary Public



STATE OF CALIFORNIA           )  
                                      ) ss:  
COUNTY OF SAN FRANCISCO    )

On this 4<sup>th</sup> day of October, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Equipment Schedule No. 6 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said of corporation.



Sharon L. Van Fossan  
Notary Public

STATE OF Texas               )  
                                      ) ss:  
COUNTY OF Orange        )

On this 30<sup>th</sup> day of September, 1988, before me personally appeared Robert L. Williams to me personally known, who being by me duly sworn says that such person is Vice-President of Sabine River and Nothern Railroad Company that the foregoing Equipment Schedule No. 6 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said of corporation.

Deloris Hall  
Notary Public